

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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ABUL LABIB; HAROLD BURROUGHS, JR.;  
CLEON TAYLOR; BARRY D. IRVIS; and  
LEE GOERGEN,

Plaintiffs,

vs

9:09-CV-1198

GREGORY SEELEY, Sheriff; RICHARD HUSSEY,  
Former Sheriff; STEVEN WORTH, Under Sheriff;  
MICHAEL SPITZ, Superintendent; KEN LIESE,  
Sgt.; DON RIVENBURG, Former Sgt.; AARON  
BEOJEKIAN, Former CO.; EDWARD VORHEESE,  
Sgt.; ED WARGA, Sgt. and Grievance Coordinator;  
DR. HULBIKI, Doctor; DONNA JULIANO, Nurse;  
ROBERT CUTTITA, and DEBORAH CLARK,  
Correctional Review Specialists; DAVID SNYDER,  
Former C.O.; JOHN JARVIS, BRIAN McMANNIS,  
MIKE SUTHERLAND, and DONNIE SKIMMERHORN,  
All C.O.s; PETER BENNETT, Sgt.; and AL SCHNUR,  
Former Lt., All of Greene County Jail,

Defendants.

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APPEARANCES:

OF COUNSEL;

ABUL LABIB  
Plaintiff, Pro Se  
08-A-4425  
Mt. McGregor Correctional Facility  
1000 Mt. McGregor Road  
Wilton, NY 12831

HAROLD BURROUGHS, JR.  
Plaintiff, Pro Se  
08-A-4423  
Clinton Correctional Facility  
PO Box 2002  
Dannemora, NY 12929

CLEON TAYLOR  
Plaintiff, Pro Se  
09-A-0663  
Attica Correctional Facility  
Box 149  
Attica, NY 14011

BARRY D. IRVIS  
Plaintiff, Pro Se  
08-A-4424  
Bare Hill Correctional Facility  
Caller Box 20  
Malone, NY 12953

LEE GOERGEN  
Plaintiff, Pro Se  
08-A-2624  
Franklin Correctional Facility  
PO Box 10  
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GOLDBERG SEGALLA LLP  
Attorneys for Defendants Seeley, Hussey,  
Worth, Spitz, Liese, Rivenburg, Vorheese,  
Warga, Hulbiki, Jarvis, McMannis, Sutherland,  
Skimmerhorn and Bennett  
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State of New York  
Attorney for Defendants Cuttita and Clark  
Department of Law  
The Capitol  
Albany, New York 12224

ADRIENNE J. KERWIN, ESQ.  
Asst. Attorney General

DAVID N. HURD  
United States District Judge

**DECISION and ORDER**

Plaintiffs commenced this civil rights action in October 2009, pursuant to 42 U.S.C.  
§ 1983. By Report-Recommendation dated February 4, 2011, the Honorable Andrew T.

Baxter, United States Magistrate Judge, recommended that the state defendants' motion (Dkt. No. 22) be granted and plaintiffs' claims as to defendants Robert Cuttita and Deborah Clark be dismissed in their entirety; that the additional county defendants' motion (Dkt. No. 79) be granted; that plaintiffs' claims as to defendants Peter Bennett, John Jarvis, Ken Liese, Brian McMannis, Gregory Seeley, Donnie Skimmerhorn, Michael Spitz, Mike Sutherland, Edward Vorheese, Ed Warga, and Steven Worth be dismissed in their entirety; and that county defendants' motion to dismiss (Dkt. No. 49) be granted in part and denied in part and all plaintiffs' claims be dismissed in their entirety as to all defendants except for plaintiffs' claim based on deliberate indifference to his serious medical need as to defendants Hulbiki and Juliano.

1. The defendants Seeley, Worth, Spitz, Liese, Vorheese, Warga, Bennett, Jarvis, Skimmerhorn, Sutherland, McMannis and Hulbiki (County defendants) have submitted lengthy objections (Docket No. 84) to the report-recommendation.

2. The county defendants have requested judicial notice with regard to the defendant Juliano (Docket No. 87), and have submitted documentation that said defendant has never been served in this matter, and no appearance has ever been made on her behalf.

3. The plaintiff Harold Burroughs has submitted objections to the recommendation (Docket No. 91) that the claims against Donna Julian be dismissed, and further requests that she now be served since she is no longer on active military duty. Plaintiff Burroughs further urges that this matter not be dismissed as against defendant Hussey.

4. The county defendants have responded to plaintiff Burroughs' objections (Docket No. 89), further urging that his objections be denied and the claims against defendant Hussey be dismissed with prejudice.

Based upon a de novo review of the entire file, including the portions of the Report-Recommendation to which the parties have responded, and the recommendations of Magistrate Judge Baxter, the Report-Recommendation is accepted and adopted with the exception of reference to defendant Donna Juliano. See 28 U.S.C. 636(b)(1).

Accordingly, it is

ORDERED that

1. The state defendants' motion (Dkt. No. 22) is GRANTED; and plaintiffs' claims as to defendants Robert Cuttita and Deborah Clark are DISMISSED in their entirety;

2. The additional county defendants' summary judgment motion (Dkt. No. 79) is GRANTED; and plaintiffs' claims as to defendants Richard Hussey and Don Rivenburg are DISMISSED;

3. The county defendants Peter Bennett, John Jarvis, Ken Liese, Brian McMannis, Gregory Seeley, Donnie Skimmerhorn, Michael Spitz, Mike Sutherland, Edward Vorheese, Ed Warga, and Steven Worth motion to dismiss is GRANTED and DISMISSED in their entirety;

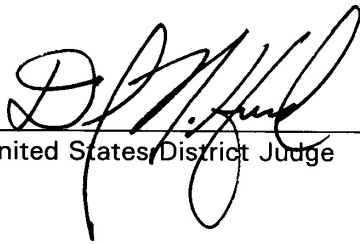
4. County defendants' Dr. Hulbiki and Nurse Juliano, motion to dismiss (Dkt. No. 49) is GRANTED IN PART and DENIED IN PART:

- a. Plaintiffs' motion as to the claim based on deliberate indifference to his serious medical needs by defendant Dr. Hulbiki is DENIED;
- b. Judicial notice is taken with regard to the defendants Donna Juliano, David Snyder, and Al Schnur; the claims against said defendants are DISMISSED WITHOUT prejudice since they have never been served, nor has any appearance ever been made on their behalf; and

5. The Clerk is directed to return the file to the Magistrate Judge for further scheduling and/or pretrial procedures regarding the remaining claims.

IT IS SO ORDERED.

Dated: March 8, 2011  
Utica, New York.

  
United States District Judge